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IN THE

Supreme Court of the United States

October Term, 1970
No. 695

COUNTY OF SANTA BARBARA, a political subdivision of the State of California; THE CITY OF SANTA BARBARA, a municipal corporation of the State of California; ALVIN WEINGAND; JACK D. KISCH; REYNOLDS YATER; JINNIE HUGLIN; NORMAN SANDERS; MARGARET D. GREENWALD; ARTHUR DAYTON; LEWIS MOTTER SMITH; MRS. GEORGE SIDENBERG, JR.; MRS. KENNETH PECK; ROBERT O. EASTON; CHARLES M. CAMPBELL, JR.; KENNETH MILLAR; WILLIAM URE; JAMES BOTTOMS; FRED EISSLER; NORMAN S. NYCE; MRS. H. R. BENHAM, JR.,

Petitioners,

vs.

ROBERT J. MALLEY, Los Angeles District Engineer, Corps of Engineers; WALTER J. HICKEL, Secretary of the Interior, United States of America; WILLIAM T. PECORA, Director, United States Geological Survey; D. W. SOLANAS, Regional Supervisor, Oil and Gas Division, United States Geological Survey; LEE DuBRIDGE, Science Advisor to the President of the United States; JOHN S. STEINHART, Office of Science and Technology and Executive Secretary to the Special Panel on the Future of the Union Oil Lease; UNION OIL COMPANY OF CALIFORNIA, a California corporation; MOBIL OIL CORPORATION, a New York corporation; PHILLIPS PETROLEUM COMPANY, a Delaware corporation; STANDARD OIL COMPANY OF CALIFORNIA, a California corporation; HUMBLE OIL AND REFINING COMPANY, a Delaware corporation; TEXACO INC., a Delaware corpora-

(Continued on next page)

tion; ATLANTIC-RICHFIELD COMPANY, a Pennsylvania corporation; GULF OIL COMPANY, a Pennsylvania corporation; PAULEY PETROLEUM, INC., a Delaware corporation; COLORADO OIL AND GAS CORPORATION, a Delaware corporation; MESA PETROLEUM CO., a Delaware corporation; McCULLOCH OIL CORPORATION OF CALIFORNIA, a Delaware corporation; J. M. HUBER CORPORATION, a New Jersey corporation; HUSKY OIL COMPANY OF DELAWARE, a Delaware corporation; SUN OIL COMPANY, a New Jersey corporation; SHELL OIL COMPANY, a Delaware corporation; WESTERN OFFSHORE DRILLING AND EXPLORATION CO., a California corporation; and PETER BAWDEN DRILLING, INC., a Delaware corporation,

Respondents.

Brief of Respondents Union Oil Company of California, Mobil Oil Corporation and Gulf Oil Corporation in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Opinions Below.

The District Court did not write an opinion in denying the motions for preliminary injunction. The opinion of the Court below in *County of Santa Barbara, et al. v. Malley, et al.* is reported at 426 F. 2d 171 (Appendix A to Petition,* pp. 1-6). The opinion in *County of Santa Barbara, et al. v. Hickel,* and *Weingand, et al. v. Hickel, et al.* is reported at 426 F. 2d 164 (Appendix, pp. 7-19).

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented.

In each of the three cases involved in the Petition,** there is but one narrow question presented:

> Did the District Court abuse its discretion in denying the preliminary injunctions sought in the respective cases?

Statement of the Case.

These cases involve oil drilling and production operations in the Santa Barbara Channel. On or about April 1, 1968, following competitive bidding, the Secretary of the Interior awarded leases to the non-gov-

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*Hereinafter cited as (Appendix, p. ....)

**The three cases were consolidated for briefing by the Court of Appeals and have been grouped together in the Petition. Accordingly, we will treat all three cases in this response.

ernment respondents authorizing them to explore for oil and to construct and operate oil production facilities on the Outer Continental Shelf in the Santa Barbara Channel. This was done pursuant to the authority vested in the Secretary of the Interior under the Outer Continental Shelf Lands Act, 43 U.S.C., Sections 1331, *et seq.*

On January 28, 1969, oil and gas began to escape under and near oil drilling Platform A located in the Santa Barbara Channel. Platform A is a facility constructed and operated by respondent Union Oil Company of California under and pursuant to a lease awarded it in the manner above described.* On February 7, 1969, the Secretary of the Interior ordered cessation of all oil drilling and production operations in the Santa Barbara Channel. At the direction of the President, the Secretary of the Interior then appointed a panel of experts, popularly known as the DuBridge Panel, to make recommendations to reduce the oil spillage and to minimize the possibility of further oil spills. On May 27, 1969, the panel issued its recommendations and shortly thereafter Union Oil Company of California commenced the implementation of said recommendations.

In October of 1969, Petitioners in *County of Santa Barbara v. Malley*, No. 25049 ("*Malley*") sought a

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*This facility was and is operated by Union Oil Company of California under agreement with its co-lessees and co-respondents herein, Mobil Oil Corporation, Gulf Oil Corporation and Texaco Inc.

mandatory preliminary injunction requiring Robert J. Malley, Los Angeles District Engineer, Corps of Engineers, to grant Petitioners a hearing on applications of Outer Continental Shelf lessees (including respondents) for permits to construct drilling and production facilities on the Outer Continental Shelf to be used in implementing the above described leases. The District Court denied the motion for preliminary injunction on the following grounds: (1) Petitioners did not show a strong likelihood that they would ultimately prevail on the merits, (2) Petitioners failed to show any substantial injury to any of their interests due to the denial of the hearings sought and (3) the non-government respondents demonstrated a great likelihood of substantial and immediate injury in the event preliminary injunctive relief was granted.

In *County of Santa Barbara v. Hickel*, No. 25413 ("*Santa Barbara*") and *Weingand v. Hickel*, No. 25414 ("*Weingand*") Petitioners sought to preliminarily enjoin the government respondents from allowing the drilling of any new wells in the Santa Barbara Channel without first (1) holding a public hearing and (2) making available to Petitioners and to the public, a reasonable time in advance of the hearing, the data upon which such respondents acted or intended to act with regard to remedial measures concerning the Santa Barbara Channel oil spill.

The District Court denied the motions for preliminary injunction in the *Santa Barbara* and *Weingand*

cases on the grounds, among others, that (1) Petitioners did not show sufficient need for the extraordinary relief which would be afforded by a preliminary injunction (2) Petitioners failed to show any irreparable injury and (3) the circumstances were such that the Court should not restrict the Secretary of the Interior's freedom of action in dealing with the urgent problem of oil spillage.

In the *Santa Barbara* and *Weingand* cases, a three-judge court was convened pursuant to 28 U.S.C., Sections 2282 and 2284 for the purpose of hearing constitutional issues. The three-judge court has ruled on certain motions raising constitutional issues; other matters which likewise raise constitutional issues are now pending before the three-judge court. In the *Malley* case a three-judge court was not convened. However, insofar as Petitioners may assert that they are entitled to an injunction on the basis of the alleged unconstitutionality of the regulations, that issue likewise must be heard by a three-judge court (Appendix, p. 6).

The Court of Appeals affirmed the orders of the District Court denying preliminary injunctions in each of the three cases. In affirming in *Malley*, the Court of Appeals concluded that the Petitioners "are not likely to prevail on the merits in this lawsuit, insofar as they rely upon the administrative regulations as the basis for their asserted right to hearings." (Appendix, p. 6). While doubting that Petitioners could establish a constitutional right to a hearing, the Court of Appeals

in *Malley* also said that if the Petitioners contend that the applicable statutes are unconstitutional because they do not expressly provide for hearings, Petitioners must take that question to a three-judge court. In the *Santa Barbara* and *Weingand* cases, the Court of Appeals, after reviewing the applicable statutes and regulations, concluded that the Petitioners have "failed to establish a right to an agency hearing before additional drilling on the outer continental shelf is allowed." (Appendix, p. 19). As to Petitioners' argument that the constitutionality of the Outer Continental Shelf Lands Act could only be saved by reading into the statute a requirement for hearings, the Court of Appeals held that such a constitutional attack must be made before the three-judge court convened by Petitioners.

ARGUMENT.

The narrow question presented by the Petition is the same issue presented to the Court of Appeals: Did the District Court abuse its discretion in denying the motions for preliminary injunction. As the Court of Appeals emphasized in affirming the District Court, the federal statutes and regulations involved do not require the hearings demanded by plaintiffs, and any constitutional issues as to the need for hearings must be presented to a three-judge court. Thus, the District Court correctly exercised its discretion in denying the preliminary injunctions. In any event, the Petition falls far short of sustaining the heavy burden required to justify the grant of certiorari to review these interlocutory rulings. *American Construction Co. v. Jacksonville, T. & K. R. Co.*, 148 U.S. 372, 384 (1893).

A. Petitioners Failed to Show a Likelihood of Prevailing on the Merits.

In *Malley*, the applicable regulations specifically provide that public hearings will "not normally be held" in connection with the application for the permits on Outer Continental Shelf Lands involved in that case. 33 C.F.R. Section 209.120(g)(3); 35 Fed. Reg. 80 (1970) (quoted, Appendix, p. 5). The regulations provide that hearings will be held "only when in the District Engineer's judgment opponents have a reasonable complaint based on interference with navigation or on adverse effects on national security." *Ibid.* While constitutional issues were properly reserved for the three-judge court, the Court of Appeals was also correct in concluding that there is little likelihood that

Petitioners could establish a constitutional right to a hearing because any hearing "would be concerned only with navigation and national security, would pertain to the use of lands controlled by the United States under lease to others, and would not purport to adjudicate the property rights of any of the plaintiffs." (Appendix, p. 6). In short, Petitioners failed to establish the likelihood of prevailing on the merits which is necessary for the granting of preliminary relief. *Perry v. Perry*, 190 F. 2d 601, 602 (D.C. Cir. 1951).

In the *Santa Barbara* and *Weingand* cases, Petitioners conceded that the Outer Continental Shelf Lands Act does not contain express language requiring the Interior Department to afford Petitioners the hearing they sought or to make available the data which they sought (Appendix, pp. 14-17). Petitioners' position was instead predicated on the argument that the applicable regulations require such a hearing (Appendix, p. 14). However, as the Court of Appeals found, the regulations cited in support of Petitioners' position do not require hearings, but merely authorize the Director of the Bureau of Land Management to hold public hearings if he wishes to do so (Appendix, pp. 15-17). Thus, it is equally clear in the *Weingand* and *Santa Barbara* cases that Petitioners are unlikely to prevail on the merits.

B. Petitioners Failed to Show Irreparable Injury.

In each of the three cases there was no adequate showing that Petitioners would suffer irreparable injury if preliminary injunctive relief were not granted. As the Court of Appeals observed, Petitioners failed to show that unless a preliminary injunction issued, there

would be another blowout or other physical damage of irreparable nature (Appendix, pp. 13-14). Instead, Petitioners attempted to show irreparable injury by asserting that they are entitled to a hearing before additional drilling is allowed and arguing that this right would be lost forever as to any new wells drilled prior to the disposition of litigation (Appendix, pp. 3, 13-14). The trouble with that line of reasoning is that it assumes that Petitioners will prevail on the merits. As we have shown, and as the Court of Appeals held, the likelihood is to the contrary, for no statute or regulation requires the hearings sought by Petitioners.

Beyond the failure of Petitioners to show irreparable injury, the District Court was entitled to consider the adverse effects on the public, as well as on the non-government defendants, of granting the injunctions demanded. See *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F. 2d 738, 743 (2nd Cir. 1953). In denying the injunctions in *Weingand* and *Santa Barbara*, the District Court properly gave weight to the fact that the preliminary relief sought by Petitioners would unduly restrict the Secretary of Interior's freedom of action in dealing with the oil spill and in fulfilling his duties under the Outer Continental Shelf Lands Act (Appendix, p. 13, n. 5). Such matters of public interest, taken together with the heavy damage to the non-government defendants if operations were brought to a standstill, are entitled to great weight in assessing the propriety of the District Court's action. *Yakus v. United States*, 321 U.S. 414, 440-441 (1944).

C. No Constitutional Issues Are Presented by the Petition.

At Petitioners' request, a three-judge court was convened to hear constitutional questions in the *Santa Barbara* and *Weingand* cases, pursuant to 28 U.S.C., Sections 2282 and 2284. In both cases Petitioners moved for summary judgment on their claims which challenged the constitutionality of the Outer Continental Shelf Lands Act and the regulations promulgated thereunder. The three-judge court, in an unreported order, denied the motions for summary judgment, holding that the Outer Continental Shelf Lands Act and the regulations promulgated thereunder "were not repugnant to the Constitution of the United States." (Appendix, p. 12).

Because all constitutional questions involved in the *Santa Barbara* and *Weingand* cases were reserved for the three-judge court, any such issues involved in the motions for preliminary injunction were not before the District Court or the Court of Appeals (Appendix, p. 19). And they are not now before this Court on the Petition for Writ of Certiorari. In the *Malley* case, insofar as Petitioners may assert that the applicable regulations are unconstitutional because they do not expressly provide for hearings as a matter of right, Petitioners must, since they seek an injunction, take that question to a three-judge court (Appendix, p. 6).

Conclusion.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.*

Respectfully submitted,

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*Because the constitutional questions pending before the three-judge court in *Weingand* and *Santa Barbara* are entirely independent and different from the narrow question presented in the instant case, we urge that the Court not defer its action on the Petition.